

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CASEY MARK BURGESS

PETITIONER

V.

CIVIL ACTION NO. 3:18-CV-360-DPJ-FKB

PELICIA HALL, COMMISSIONER,
MISSISSIPPI DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER

This habeas petition is before the Court on the Report and Recommendation [11] of Magistrate Judge John C. Gargiulo. Judge Gargiulo recommended dismissing the petition as time barred under 28 U.S.C. § 2254(d). Petitioner Casey Mark Burgess, who is represented by counsel, has not filed an Objection, and the time to do so has passed.

Burgess was convicted of attempted kidnapping and aggravated assault on June 19, 2013. The Mississippi Court of Appeals affirmed his conviction, and the Mississippi Supreme Court denied his petition for writ of certiorari on February 9, 2017. Burgess did not file a petition before the United States Supreme Court and filed the instant petition for habeas relief on May 31, 2018.

Judge Gargiulo concluded that Burgess's conviction and sentence became final on May 10, 2017, ninety days after his petition for writ of certiorari was denied. R&R [11] at 6 (citing *Roberts v. Cockrell*, 319 F.3d 690, 694–95 (5th Cir. 2003)). Because Burgess did not file the instant petition until May 31, 2018, his petition is untimely under the one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254(d). Petitioner argued that he was entitled to equitable tolling, but Judge Gargiulo correctly found that he had

“not demonstrated any rare or exception circumstances” that would trigger equitable tolling. R&R [11] at 7; *see Felder v. Johnson*, 204 F.3d 168, 170–71 (5th Cir. 2000).

Accordingly, the Court finds the unopposed Report and Recommendation [11] should be adopted as the opinion of the Court. Respondent’s motion to dismiss [5] is granted. The petition is dismissed as time barred.

A separate judgment will be entered in accordance with Federal Rule of Civil Procedure 58.¹

SO ORDERED AND ADJUDGED this the 5th day of February, 2019.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE

¹ On January 29, 2019, Burgess mailed a letter to the Court requesting the civil docket for his case file. Burgess mailed his letter after the deadline to object to the Report and Recommendation, and because he is represented by counsel, he cannot file motions in this court. *See United States v. Alvarado*, 321 F. App’x 399, 400 (5th Cir. 2009) (“Because Alvarado was represented by counsel in the district court, he was not entitled to file a pro se motion on his own behalf.”).